
(2010) 02 DEL CK 0264

In the Delhi High Court

Case No : Writ Petition (C.) No. 1134 of 2010

DTC Engineers Association (Regd.)

APPELLANT

Vs

D.T.C. and Others

RESPONDENT

Date of Decision : 23-02-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2010) 02 DEL CK 0264

Hon'ble Judges : Mool Chand Garg, J;Anil Kumar, J

Bench : Division Bench

Advocate : Vinay Kumar Garg, for the Appellant; Avnish Ahlawat, Ms. Latika Chaudhary, Advocates for the respondent/DTC, Ms. Parul Sharma, Advocate for Mr. V.K. Tandon, Advocate for respondents No. 2, 3 and 4, for the Respondent

Final Decision : Dismissed

Judgement

Mool Chand Garg, J.—The petitioner association represents the Assistant Foreman working with respondent No.1/DTC, who were given pay scale of Rs. 1400-2300 at the time of 4th Pay Commission. They claim pay scale of Rs.5000-8000 as replacement pay scale after coming into force of the recommendations of the 5th Pay Commission. It is submitted that the pay scale made admissible to them on the basis of decision taken by the Management are not in accordance with the recommendations of the fifth pay commission as accepted by the Government of India.

2. It is their case that at the time of applying 4th Pay Commission they were given the pay scale of Rs.1400-2300 and in respect of the said pay scale as per the recommendation of 5th Pay Commission they should have been given pay scale of Rs.5000-8000. However, they were given pay scale of Rs.4500-7000.

3. Aggrieved by the aforesaid action of the respondents, the petitioner association had been making representations with the respondents. They also came to this Court by filing W.P.(C).2719/2000. In that case, before transferring

the matter to the Central Administrative Tribunal, Principal Bench, New Delhi, this Court vide order dated 27.10.2005 passed following directions:

I have heard counsel for the parties and been taken through the previous orders as well as the affidavit of the DTC filed on 23rd February, 2005. It does not indicate that the report of the sub committee was indeed placed before the Board for consideration. In spite of the two orders seeking a clarification, the DTC has chosen to skirt the issue but has merely averred that the Board after considering various aspects of the representations rejected the same.

Learned counsel for the respondent has relied upon a subsequent averment in the affidavit of 23rd February, 2005 to say that the matter was considered by the Board. However, there is nothing in support of that submission in either of the previous affidavits or by way of reference to the concerned Annexure in the previous agenda, items or resolution. It would, therefore, be appropriate that the report of the sub committee is considered separately by the Board. A direction is accordingly issued. Let the Board take a decision on this aspect within a period of four weeks from today after considering the report of the Sub-Committee. The Decision shall be communicated to the petitioners and a copy thereof shall be filed on record before the next date of hearing along with an affidavit.

4. Pursuant to the aforesaid directions, the matter was considered by the Board of D.T.C. but the Board did not accept the case of the petitioner inasmuch as the representation made by them to grant the pay scale of Rs.5000-8000 was not accepted.

5. In the meanwhile, the matter after transfer to the Tribunal was decided by the impugned order dated 22.07.2009. The matter was heard denovo before the Tribunal. However, the Tribunal has not accepted the case of the petitioner.

6. According to the petitioner, the post of Assistant Foreman at which they are working and for which pay scale of Rs.1400-2300 was provided at the time of 4th Pay Commission was upgraded to the pay scale of Rs.5000-8000 as per the recommendation of 5th Pay Commission as has been accepted by the Government and has been applied by other corporations and authorities under respondent No.2 Govt. of N.C.T. of Delhi where the scale has been conferred to Diploma Holder/Engineers who were also working in the pay scale of Rs. 1400-2300 at the time of 4th Pay Commission. It is submitted that the work done by the members of the petitioner association as well as by Junior Engineers/ Assistant Engineers working in various departments is similar and therefore on the basis of parity and on the basis of the principle of "equal pay for equal work", they should be granted the pay scale of Rs.5000-8000. Denial of such pay scale to them is arbitrary and as such the decision of the respondent as well as the Tribunal in T.A.No. 675/2009 is liable to be set aside with directions to the respondents to confer the pay scale of Rs.5000-8000 to the members of the petitioner association.

7. It is also submitted that that post of the members of the petitioner

association, i.e., Assistant Foreman is also interchangeable with that of Assistant Engineer/Junior Engineer. Hence, it is also prayed that respondent No.1 be also directed to re-designate the post of Assistant Foreman as Junior Engineer in the pay scale of 5000-8000/- with the next promotional post as Assistant Engineer in the pay scale of 6500-10500/-. It is submitted that this prayer has also been rejected by the Tribunal without any cogent reason.

8. We have heard the submissions made by the learned counsel for the petitioner and have also carefully perused the order passed by the Tribunal.

9. While rejecting the prayer made by the petitioner, the Tribunal has taken into consideration the decision of the Board in not granting the pay scale, which is assailed by the petitioners, on account of a policy decision based on financial constraints of the Corporation which is an autonomous body.

10. We have also considered the views taken by the Board which has rejected the plea of petitioner and has made the following observations:

Resolution No.144/2004: item No.137/2004: Existence of anomalies in the pay scales of Officers/officials of DTC consequent to the implementation of 5th Pay Commissions report.

This Board considered the agenda item & the orders of Hon''ble High Court of Delhi and discussed the matter in detail.

The Board noted that 50% posts of Asstt. Foreman are filled up from promotional feeder category of Mechanic and its allied categories and 50% posts are filled up by direct recruitment of Diploma holders as apprenticeship under the Apprenticeship Act for one year Apprenticeship and thereafter they go through one year training as Trainee Supervisor. A panel of such trainee supervisors is maintained and as & when vacancy arises, these Trainee Supervisors are offered the post of Asstt. Foreman. In case, the Trainee Supervisor accepts the offer by accepting the terms & conditions of appointment, he is appointed as an Asstt. Foreman. Earlier they used to be appointed as Chargeman, who were having pay scales equivalent to pay scale of post of Mechanic. After the order of Hon''ble High Court dated 04.02.1980 the post of Chargeman was re-designated and upgraded in a higher grade of Asstt. Foreman vide DTC Board's Resolution No.7/83 dated 17.02.1983. An agreement was also entered into between the Corporation & DTC Engineers's Association in 1991 regarding fixation of their scales.

The Board also observed that the posts of Asstt. Foreman & Foreman are functional posts and are necessary in the working of the Corporation for the depot workshop and Central workshop, therefore, the post of Foreman cannot be abolished.

The Board further observed that the recommendations of 5th Pay Commission have been implemented in the Corporation only in part as the Corporation is an autonomous body and has its specific functional requirements. The Board also

observed that comparison between the posts of different departments, i.e., the post of Section Officer in Civil Engg. Deptt. Or of any other category and the post of Asstt. Foreman in R&M Deptt. Of the Corporation is not reasonable as each department has its distinct significance and role in the organization. It will disturb the relativities of other categories in the Organization. Further, the recruitment rules and terms and conditions for each post are different & not comparable.

The Board, in view of these facts & precarious financial position of the Corporation, found it difficult to accept the representation/demands of DTC Engineers" Association and hence, rejected the same. The case may be pursued as per its merits in the Hon"ble Court.

11. In view of the aforesaid, in our opinion this Court cannot review the decision of Government which is a policy matter of an Autonomous Body based on various reasons and factors including financial constraints which has been upheld by the Tribunal in view of the judgment of the Apex Court in Union of India (UOI) and Others Vs. Hiranmoy Sen and Others, wherein it has been held:

5. Learned counsel for the respondents submitted that the auditors and assistants have been historically treated on a par in the matter of pay scales. Although this fact has been denied by the appellant, we are of the opinion that even if it is correct, that will not be of any help to the respondents. To give an illustration, if post A and post B have been carrying the same pay scales, merely because the pay scale of post A has been increased that by itself cannot result in

increase in the pay scale of post B to the same level. It is entirely on the Government and the authorities to fix the pay scales and to decide whether the pay scale of post B should be increased or not. The judiciary must exercise self-restraint and not encroach into the executive or legislative domain.

12. Similarly, in the case of Union of India (UOI) and Another Vs. P.V. Hariharan and Another, , it has been held:

5. Before parting with this appeal, we feel impelled to make a few observations. Over the past few weeks, we have come across several matters decided by Administrative Tribunals on the question of pay scales. We have noticed that quite often the Tribunals are interfering with pay scales without proper reasons and without being conscious of the fact that fixation of pay is not their function. It is the function of the Government which normally acts on the recommendations of a Pay Commission. Change of pay scale of a category has a cascading effect. Several other categories similarly situated, as well as those situated above and below, put forward their claims on the basis of such change. The Tribunal should realise that interfering with the prescribed pay scales is a serious matter. The Pay Commission, which goes into the problem at great depth and happens to have a full picture before it, is the proper authority to decide upon this issue. Very often, the doctrine of "equal pay for equal work" is also being misunderstood and misapplied, freely revising and enhancing the pay

scales across the board. We hope and trust that the Tribunals will exercise due restraint in the matter. Unless a clear case of hostile discrimination is made out, there would be no justification for interfering with the fixation of pay scales. We have come across orders passed by Single Members and that too quite often Administrative Members, allowing such claims. These orders have a serious impact on the public exchequer too. It would be in the fitness of things if all matters relating to pay scales, i.e., matters asking for a higher pay scale or an enhanced pay scale, as the case may be, on one or the other ground, are heard by a Bench comprising at least one Judicial Member. The Chairman of the Central Administrative Tribunal and the Chairmen of the State Administrative Tribunals shall consider issuing appropriate instructions in the matter.

13. Even otherwise, we do not find any infirmity in the order of the Tribunal which call for our interference while exercising powers under Article 226 of the Constitution of India. Accordingly, the writ petition is dismissed with no orders as to costs.